man can work standing upon his feet for more than ten hours a day, day after day, without injury to himself, a woman cannot, and that to require a woman to stand upon her feet for more than ten hours in any one day and perform severe manual labor while thus standing, day after day, has the effect to impair her health, and that as weakly and sickly women cannot be the mothers of vigorous children, it is of the greatest importance to the public that the state take such measures as may be necessary to protect its women from the consequences induced by long, continuous labor in those occupations which tend to break them down physically."

The court attempted to distinguish their holding from that of the same court in the earlier case. After quoting from the earlier opinion the court said: "We therefore repeat what we have once said, that it is not at all clear that the court in rendering the opinion in the Ritchie case, where an eight hour day was held to be unconstitutional, was of opinion a statute fixing a ten hour day in which women might work would be unconstitutional." It would seem that the court was not very successful in distinguishing the two cases.

In addition to the decisions of the Oregon court and the United States Supreme Court, supra, the following cases have sustained similar legislation: *Wenham* v. *State,* 65 Neb. 394, 91 N. W. 421, 58 L. R. A. 825; *Commonwealth* v. *Hamilton Manf. Co.,* 120 Mass. 383; *Washington* v. *Buchanan,* 29 Wash. 602, 59 L. R. A. 342. In connection with these cases it is interesting to compare the case of *Lochner* v. *New York,* 198 U. S. 45, in which it was held that a New York statute limiting the hours of labor of *men* working in bakeries to ten per day was unconstitutional as denying the freedom to contract. For a somewhat extended discussion of the subject of limiting hours of labor for women see 8 MICH. L. REV. 1. R. W. A.

CONSTITUTIONALITY OF THE NEW JERSEY STATUTES PROVIDING FOR THE GOVERNMENT OF CERTAIN CITIES BY APPOINTED BOARDS.—The growing desire of the inhabitants of cities to centralize the responsibility of city government in the mayor, or other chief administrative official, is evidenced by recent legislation in many states. This is usually attempted to be accomplished by the distribution of the powers of government among certain boards, created for that purpose, whose members are appointed by the mayor. Legislation of this sort has been attacked in various ways and the litigation in such cases has given rise to much discussion and many interesting decisions.

A recent case of this sort is *Wilson, Atty. Gen.* v. *McKelvey, et al.,* decided by the Court of Errors and Appeals of New Jersey, June 20, 1910, and reported in 77 Atl. 94. The New Jersey legislature, in 1907, passed three acts, the purpose of which evidently was to create a new form of city government for the city of Paterson. These acts (Laws of New Jersey, 1907, pp. 79, 89, and 114) created three boards or commissions, a Board of Fire and Police Commissioners, a Board of Finance and a Board of Public Works, and among these three apportioned a great number of the more important functions of city government and administration. The members of these respective boards were directed to be appointed by the mayor; and their ordi-

nances, resolutions and acts, other than the appointment of officers, were to be submitted to the mayor and to be subject to his veto which, if exercised, was to be final unless the board by a majority vote of all the members thereof should pass the measure over the mayor's veto—the intention and purpose being to fix the responsibility for the acts of the administration on the mayor himself instead of leaving it to be shared by the mayor and the common council.

In stating the qualifications of the members of these boards these acts provided that not more than two of the four members should be adherents of the same political party. By their terms, the acts were made applicable to all cities in the state having at the time of the passage of the acts or at any time thereafter a population of not less than one hundred thousand nor more than two hundred thousand inhabitants. At the time of the passage of these acts Paterson was the only city in the state which, according to the then latest census, would be affected. Under the authority of one of these statutes, Charles D. McKelvey and three others were appointed members of the Board of Public Works. Quo warranto proceedings were brought by the attorney general against the members of this board to test their right to exercise the powers delegated to the board on the ground that the statute creating it was unconstitutional in that it prescribed political qualifications for the holding of office and because it was a private, local and special law regulating the internal affairs of a city, the passage of which is forbidden by Art. 4, § 7, par. 11, of the New Jersey constitution. The defendants demurred to the information and the Supreme Court of New Jersey sustained the demurrer; *McCarter, Atty. Gen.* v. *McKelvey et al.* (1908), 73 Atl. 884, and same case (1909), 74 Atl. 316. The case went up to the Court of Errors and Appeals on a writ of error to the Supreme Court. The higher court (Judges PITNEY, BERGEN and GARRISON dissenting) affirmed the judgment of the Supreme Court.

The first objection referred to that clause of the act which provided that not more than two of the four members of the board should be members of the same political party. Justice GUMMERE, who wrote the opinion when the case was before the Supreme Court, met this contention with the argument that even assuming that to prescribe political qualifications for the holding of public office is against the spirit of the constitution, the statute here referred to is not unconstitutional for this reason because it does not prescribe political qualifications as a requisite for membership on the board it creates, but rather allows one of any political faith to be appointed to the board, and simply limiting the representation of any party to two members cannot be said to be enforcing a political qualification for the holding of office. A statute similar to the act in question has been held not to be in conflict with the constitution of New York. *Rogers* v. *Common Council of the City of Buffalo, et al.* (1890), 123 N. Y. 173, 25 N. E. 274, 9 L. R. A. 579. The court in this case reasoned that though the appointment of two members of the Civil Service Commission from one political party rendered all other members of the same party ineligible to the third place on the Commission this did not amount to disfranchising any citizen of the state or depriving

him of any rights or privileges secured to any citizen thereof or of life, liberty or property as prohibited by the constitution. In his opinion in this case, Justice PECKHAM said, "With the appointment of the third, another condition arises, and that condition prevents the selection being made from the ranks of the same political party from which the other two appointments have been made. Having been a member of the eligible class from which the other two persons were selected, and having thus had his constitutional chance of appointment equally with all the others of that class, all being eligible, we cannot think that while two others from his class have been taken, and consequently he has been omitted in the two appointments, his eligibility for holding office extends, by virtue of this section of the Constitution, to the right of appointment as a third member of such commission, in spite of the condition limiting the appointment to two from any one political party. In such case it cannot be truly said that eligibility to hold office depends on party affiliation." In the cases of *City of Evansville* v. *State* (1888), 118 Ind. 426, 21 N. E. 267, 4 L. R. A. 93, and *Attorney General* v. *Detroit* (1885), 58 Mich. 213, 24 N. W. 887, 55 Am. Rep. 675, cited as authority for the position of the Attorney General in the New Jersey case, the acts attacked provided that appointment of members of certain boards should be made from the members of the two leading political parties, two from each one, which operated to exclude from membership on the boards one having no party adherence or one whose affiliation was with another than one of the two leading parties. These cases were clearly correctly decided, and are as clearly not in point as authorities for the decision of the principal case. It seems that without question the New Jersey court reached the correct conclusion on this point.

On the other question in the McKelvey case, *i. e.*, was the act attacked a private, local or special law regulating the internal affairs of a city, the answer is not so clear and the Justices of the Court of Errors and Appeals were not agreed. Population may be made the basis of classification in statutes relating to municipalities and their form of government. In fact, this is generally adopted as the basis of the classification made. And the mere fact that at the time of the passage of such an act it affects only one city in the state does not render it a local or special law, *Van Reipen* v. *Jersey City* (1895), 58 N. J. L. (29 Vroom) 262, 33 Atl. 740, provided it is so constructed that other cities may come under its provisions when their growth brings their population up to the required figure; and in determining the constitutionality of an act the court cannot inquire as to whether the legislature, in fixing the standard of classification, proposed bringing only a single city under the act. *State, ex rel. City of Terre Haute* v. *Kolsem* (1891), 130 Ind. 434, 29 N. E. 595, 14 L. R. A. 566. But any such classification must be reasonable and just and must not be illusive, in other words it must not be one contrived merely with a view of escaping the constitutional restrictions. *Strong* v. *Dignan* (1904), 207 Ill. 385, 69 N. E. 909, 99 Am. St. Rep. 225; *L'Hote* v. *Village of Milford* (1904), 212 Ill. 418, 72 N. E. 399, 103 Am. St. Rep. 234; *Darcy* v. *Mayor & Common Council of San Jose* (1894), 104 Cal. 642, 38 Pac. 500; *State, ex rel. Warner* v. *Hoagland* (1888),

51 N. J. L. 62. It has been held that the distinction necessary to make a class, under the constitutional prohibition of special and local legislation, must be something in the situation or circumstances of the places embraced by the enactment which would render like powers, if granted, inappropriate to and unavailable for, other places. *State, ex rel. Van Giesen* v. *Inhabitants of Bloomfield et al.* (1885), 47 N. J. L. 442, 2 Atl. 249; *City of New Brunswick* v. *Fitzgerald* (1886), 48 N. J. L. 457, 8 Atl. 729.

The whole question in the principal case resolves itself into this, Is there any reason why cities having a population of not less than one hundred thousand and not more than two hundred thousand inhabitants need government by boards and consequent centralization of political responsibility in the mayor which would not apply with equal force to smaller cities or cities of greater size. The dissenting Justices thought not, and so considered the classification illusive and the law unconstitutional. The majority of the court, reasoning that it is the duty of the judiciary to determine, not whether in their opinion the correct view was that there were good reasons why this form of government should be applied to cities of the specific size designated by the act and to no others, but rather to determine whether there was a permissible view which the legislative department of government might have taken which would support the act, concluded that the view that cities of this certain size had a peculiar need for such form of government was permissible, and that, for them to determine whether such view were the best one would be to usurp a legislative function, and upheld the act as constitutional. In their method of interpreting their duty in the premises they are supported by Justice GARRISON'S opinion in *Booth* v. *McGuinness* (1910), — N. J. —, 75 Atl. 455, and even though one were inclined to question whether the need of such centralization of responsibility by such form of government is peculiar to cities of the size designated by the act, one would hesitate to criticise the decision as opposed to the weight of authority. G. S.

LEGAL CONSEQUENCES OF FAILURE OF A FOREIGN CORPORATION TO OBTAIN AUTHORITY TO TRANSACT BUSINESS.—Whether a foreign corporation which has not complied with the statutes of a state prescribing the terms on which the corporation may transact business, can enforce a contract in the state courts is a proposition concerning which American decisions are irreconcilably in conflict. The questions of law herein involved are well illustrated by the case of *Model Heating Co.* v. *Magarity* (1910), — Del. —, 75 Atl. 614.

The facts of the case in question were, briefly, as follows: Plaintiff installed a heating apparatus in the dwelling house of the defendant at the special instance and request of defendant, and brought an action of assumpsit to recover the balance of the price due therefor. Plaintiff declared upon a special contract and on the common counts. The defendant, in avoidance of the action, pleaded, *inter alia*: That plaintiff was a foreign corporation, and had not, at or prior to the bringing of this suit, complied with the provisions of Art. 9, § 5 of the Constitution of the State of Delaware, to wit: "No foreign corporation shall do any business in this state * * * without having